SUPREME COURT OF INDIA

Mumbai Agricultural Produce Market Committed

Vs

Hindustan Lever Limited

Appeal (civil) 3042 of 2008 (Arising out of SLP (C) No.1847 of 2007)

(S.B. Sinha and Lokeshwar Singh Panta)

29/04/2008

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. Appellant is a Market Committee constituted under the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (for short, 'the Act'). First respondent herein deals in Edible Oils and Vanaspati. By reason of a Notification dated 25.9.1987, the State of Maharashtra in exercise of its power under Section 62 of the said Act added some items in the Schedule appended thereto such as sugar, dry fruits, edible oils and

vanaspati to the Schedule of the Act. Appellant No.1, Market Committee, started collecting market fee as also supervision charges on all notified agricultural produces marketed on wholesale basis. The wholesale market in respect of condiments, spices, dry fruits etc. was shifted from Greater Bombay to New Bombay on and from 1.1.1991 where a huge market had been constructed by the appellants.

3. Respondents allegedly, despite the applicability of the provisions of the said Act as also the Notification dated 25.9.1987, did not get itself registered thereunder contending that 'Vanaspati' had not been included in the Schedule appended thereto. Some of the traders dealing in edible oil had also obtained exemption from payment of market fee and supervision charges for a short time. Such exemption granted was, however, withdrawn. Various litigations were initiated before the Bombay High Court questioning the validity of the said notification as also levy of market fee and supervision charges by the Committee.

4. Respondent Nos.1 and 2 also filed writ petitions in the year 1988 contending that they were not liable to pay any market fee or supervision charges.

5. The High Court by reason of a judgment and order dated 16.6.2006 although rejected the contention that the respondents were not liable to pay any market fee, opined that the appellant was not entitled to collect supervision charges. Supervision charges as also interest accrued thereon were payable to the State Government.

The High Court in its judgment held:

"The impugned orders which have been passed either during the pendency of the petition or before the petition was filed are silent on the quantum of supervision charges paid by the respondent No.1-Committee to the State Government in respect of the sale/distribution of vanaspati produced by the petitioners and marketed in the market area of respondent No.1, though not from the market yard. In the absence of the petitioners having an outlet or a depot or a trading centre in the market yard of respondent no.1, the other place is only the premises of the petitioners as admittedly the respondent no.1 has not established any other collection centres or subsidiary markets by exercising powers under Section 5 and Section 30A of the Act. We are, therefore, of the considered view that the respondent No.1-Committee has no powers to cause recovery of supervision charges from the petitioners as at present and the impugned orders to that extent are unsustainable."

In regard to the payment of interest, it was held:

"We are afraid Clause (y) below Rule 120 does not come to the rescue of the Market Committee in support of its case that it has the power to charge interest varying from 12% to 21% on the delayed dues of market fees and supervision charges under bye-law No.14(A). Section 31 as well as sections 34A to 34C clearly provide for only penal charges and bye-law no.14 cannot be termed so as to cover condition of trading and marketing in the market area. We have also noticed that on issuance of the notice by the Market Committee, the petitioners have taken due steps and during the pendency of the petitions or before the impugned orders for recovery were passed, they have deposited certain sums. In both the petitions, it is not a case of inordinate delay in responding to the demands and, in fact, the demands have been substantially met within few months. No reasons have been given in the impugned orders as to why the Market Committee felt it appropriate to recover interest and not the penal charges from the petitioners. We, therefore, hold that the respondent No.1 has no powers to charge interest at the rate of 12% or any higher rate upto 21% on the delayed payment of market fees and supervision charges and it was not even otherwise justified to levy such charges in the instant cases."

6. Mr. Bhatt, learned senior counsel appearing on behalf of the appellant, would submit that the question as to whether any supervision charges were payable or not had not been raised by the respondents and in that view of the matter, the High Court committed a serious error in arriving at the aforementioned conclusion.

7. Mr. Gopal Jain, learned counsel for the respondents, however, would support the impugned judgment.

8. Levy of market fee and supervision charges stand on different footings. Whereas market fee is payable on the transactions carried out in the market area, the power to realize the supervision charges is vested in the State. For the said purpose, it has to issue a general or special order. Staff must be appointed by the State for the purpose of carrying out supervision of the market areas. Only when the pre-requisites contained in Section 34A of the Act are fulfilled, the question of recovery of such charges from the person purchasing such produce in such market or market area would arise. The costs of supervision is to be calculated by the Market Committee in such a manner so as to enable it to levy the said fee under Section 31. Sub-section (2) of Section 34B of the Act provides that the cost of supervision collected by a Market Committee shall be paid to the State Government in the prescribed manner.

9. The fact that Vanaspati is an item which has validly been added to the Schedule appended to the Act and the Rules framed thereunder is now not in dispute. The judgment of the High Court

rendered in this regard has been accepted by the respondent. It deposited the amount of market fee on various dates as detailed herein below :

"Date of Payment	Amount Deposited
2.03.1998	Rs.4, 00,000/-
31.03.1998	Rs.18, 00,000/-
21.07.1998	Rs.62, 84,779/-
7.09.1998	Rs.6, 000/-"

10. It, however, appears that the validity of the levy and collection of the supervision charges was specifically raised by the respondent herein on the ground that no service whatsoever of any kind was being rendered in the said market area. The High Court, by reason of its judgment, opined that the costs for supervision were incidental charges to be recovered and paid to the Government in respect of the staff employed by it. It is not a power vested in the Committee and, thus, the conditions precedent therefor were required to be shown to be existing, i.e., that the Government had employed staff and had been rendering services by way of supervising the buying and selling of the agricultural produces in the market area.

11. The power to recover the charges for the supervisory staff employed at the expenses of a section of the industry is not a general power. It is provided for specifically in terms of the Act. When the statute mandates that the cost of supervision would be borne by the licensee, it does not constitute levy of tax. It may be a part of contract. It may have to be paid as a liability to comply with the provisions of the statute and statutory Rules validly made. The cost has to be determined. It may have to be apportioned. It cannot be levied or calculated in such a manner so as to cause unjust enrichment in favour of the State.

12. The quantum of recovery, however, need not be based on mathematical exactitude as such cost is levied having regard to the liability of all the licensees or a section of them. It would, however, require some calculation.

13. A finding of fact has been arrived at by the High Court that no service was being rendered by the State. If no service is being rendered, even no fee could have been levied. It has been so held by a Constitution Bench of this Court in Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors. [(2006) 7 SCC 241] in the following terms:

"40. Tax is levied as a part of common burden. The basis of a tax is the ability or the capacity of the tax payer to pay. The principle behind the levy of a tax is the principle of ability or capacity. In the case of a tax, there is no identification of a specific benefit and even if such identification is there, it is not capable of direct measurement. In the case of a tax, a particular advantage, if it exists at all, is incidental to the State's action. It is assessed on certain elements of business, such as, manufacture, purchase, sale, consumption, use, capital, etc. but its payment is not a condition precedent. It is not a term or condition of a licence. A fee is generally a term of a licence. A tax is a payment where the special benefit, if any, is converted into common burden.

41. On the other hand, a fee is based on the "principle of equivalence". This principle is the converse of the "principle of ability" to pay. In the case of a fee or compensatory tax, the "principle

of equivalence" applies. The basis of a fee or a compensatory tax is the same. The main basis of a fee or a compensatory tax is the quantifiable and measurable benefit. In the case of a tax, even if there is any benefit, the same is incidental to the government action and even if such benefit results from the government action, the same is not measurable. Under the principle of equivalence, as applicable to a fee or a compensatory tax, there is an indication of a quantifiable data, namely, a benefit which is measurable."

14. The principle of equivalence, therefore, is the foundation for levy of a fee. It must be held to be the foundation of a statutory charge like supervisory charges. It was for the State to prove it. Once the State has failed to bring record the foundational facts, it is not for the appellant who is merely a statutory authority for collecting the same as an agent of the State to contend that the same was payable. The State of Maharashtra is not before us.

In Aashirwad Films v. Union of India (UOI) and Ors. [(2007) 6 SCC 624], it has been held:

"It is also required to be realized that imposition of reasonable tax is a facet of good governance."

15. Cost of supervision, if borne by the State has to be recovered by it. The burden was, therefore, on the State to justify the levy. Even the general or special order, if any, purported to have been issued by the State has not been brought on record. On what basis, the supervision charges were being calculated is not known. The premise for levy or recovery of the amount of supervisory charges is not founded on any factual matrix. Only the source of the power has been stated but the basis for exercise of the power has not been disclosed.

16. We, therefore, are of the opinion that there is no infirmity in the impugned judgment.

17. So far as the question of payment of interest is concerned, it must be referable to the statute. When the statute controls the levy, the interest payable thereupon, as envisaged thereunder must also govern the field. The general principle of restitution may not apply in this case.

18. The High Court having exercised its discretionary jurisdiction in the matter, we do not find any reason to take a different view. The impugned judgment, therefore, needs no interference. The appeal is dismissed with no order as to costs.